

HOUSE BILL 350

E1

(2lr0457)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegates Clippinger, Alston, Anderson, Bobo, Carter, Cluster, Cullison, Dumais, Dwyer, Glenn, Hammen, Kaiser, K. Kelly, Luedtke, McDermott, McHale, McIntosh, Mitchell, Niemann, B. Robinson, Rosenberg, Simmons, Smigiel, Tarrant, Valentino-Smith, Waldstreicher, Washington, Wilson, and Zucker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De ~~Minimus~~ Minimis Quantity**

3 FOR the purpose of establishing a reduced penalty for a person convicted of the use or
4 possession of less than a certain quantity of marijuana; providing that, with a
5 certain exception, the use or possession of less than a certain quantity of
6 marijuana may not be considered a lesser included crime of any other crime;
7 providing that a *certain* sentence imposed under this Act shall be stayed under
8 certain circumstances without requiring an appeal bond; and generally relating
9 to penalties for possession of marijuana.

10 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 Article – Criminal Law
2 Section 5–601
3 Annotated Code of Maryland
4 (2002 Volume and 2011 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Criminal Law**

8 5–601.

9 (a) Except as otherwise provided in this title, a person may not:

10 (1) possess or administer to another a controlled dangerous substance,
11 unless obtained directly or by prescription or order from an authorized provider acting
12 in the course of professional practice; or

13 (2) obtain or attempt to obtain a controlled dangerous substance, or
14 procure or attempt to procure the administration of a controlled dangerous substance
15 by:

16 (i) fraud, deceit, misrepresentation, or subterfuge;

17 (ii) the counterfeiting or alteration of a prescription or a written
18 order;

19 (iii) the concealment of a material fact;

20 (iv) the use of a false name or address;

21 (v) falsely assuming the title of or representing to be a
22 manufacturer, distributor, or authorized provider; or

23 (vi) making, issuing, or presenting a false or counterfeit
24 prescription or written order.

25 (b) Information that is communicated to a physician in an effort to obtain a
26 controlled dangerous substance in violation of this section is not a privileged
27 communication.

28 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
29 person who violates this section is guilty of a misdemeanor and on conviction is subject
30 to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

1 (2) (I) A person whose violation of this section involves the use or
 2 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not
 3 exceeding \$1,000 or both.

4 (II) 1. A PERSON CONVICTED OF THE USE OR
 5 POSSESSION OF LESS THAN ~~14~~ 7 10 GRAMS OF MARIJUANA IS SUBJECT TO
 6 IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR
 7 BOTH.

8 2. UNLESS SPECIFICALLY CHARGED BY THE STATE,
 9 THE USE OR POSSESSION OF LESS THAN ~~14~~ 7 10 GRAMS OF MARIJUANA UNDER
 10 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A
 11 LESSER INCLUDED CRIME OF ANY OTHER CRIME.

12 3. IF A PERSON IS CONVICTED UNDER THIS
 13 SUBPARAGRAPH AND FILES AN APPEAL, THE COURT SHALL STAY ANY SENTENCE
 14 IMPOSED THAT INCLUDES A PERIOD OF IMPRISONMENT DURING THE PENDENCY
 15 OF THE APPEAL WITHOUT REQUIRING AN APPEAL BOND, THE COURT SHALL
 16 STAY ANY SENTENCE IMPOSED THAT INCLUDES AN UNSERVED, NONSUSPENDED
 17 PERIOD OF IMPRISONMENT WITHOUT REQUIRING AN APPEAL BOND:

18 A. UNTIL THE TIME FOR FILING AN APPEAL HAS
 19 EXPIRED; AND

20 B. IF AN APPEAL IS FILED, DURING THE PENDENCY
 21 OF THE APPEAL.

22 (3) (i) 1. In this paragraph the following words have the
 23 meanings indicated.

24 2. “Bona fide physician–patient relationship” means a
 25 relationship in which the physician has ongoing responsibility for the assessment,
 26 care, and treatment of a patient’s medical condition.

27 3. “Debilitating medical condition” means a chronic or
 28 debilitating disease or medical condition or the treatment of a chronic or debilitating
 29 disease or medical condition that produces one or more of the following, as documented
 30 by a physician with whom the patient has a bona fide physician–patient relationship:

31 A. cachexia or wasting syndrome;

32 B. severe or chronic pain;

33 C. severe nausea;

- 1 D. seizures;
- 2 E. severe and persistent muscle spasms; or
- 3 F. any other condition that is severe and resistant to
4 conventional medicine.

5 (ii) 1. In a prosecution for the use or possession of
6 marijuana, the defendant may introduce and the court shall consider as a mitigating
7 factor any evidence of medical necessity.

8 2. Notwithstanding paragraph (2) of this subsection, if
9 the court finds that the person used or possessed marijuana because of medical
10 necessity, on conviction of a violation of this section, the maximum penalty that the
11 court may impose on the person is a fine not exceeding \$100.

12 (iii) 1. In a prosecution for the use or possession of
13 marijuana under this section, it is an affirmative defense that the defendant used or
14 possessed marijuana because:

15 A. the defendant has a debilitating medical condition
16 that has been diagnosed by a physician with whom the defendant has a bona fide
17 physician-patient relationship;

18 B. the debilitating medical condition is severe and
19 resistant to conventional medicine; and

20 C. marijuana is likely to provide the defendant with
21 therapeutic or palliative relief from the debilitating medical condition.

22 2. The affirmative defense may not be used if the
23 defendant was:

24 A. using marijuana in a public place; or

25 B. in possession of more than 1 ounce of marijuana.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2012.